

1999 DRAFTING REQUEST

Bill

Received: **10/06/1999**

Received By: **kunkemd**

Wanted: **As time permits**

Identical to LRB:

For: **Steve Wieckert (608) 266-3070**

By/Representing: **Scott Becher**

This file may be shown to any legislator: NO

Drafter: **kunkemd**

May Contact:

Alt. Drafters:

Subject: **Occupational Reg. - misc**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

DORL rule making regarding supervision of real estate brokers

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
			10/22/1999 _____		10/22/1999	10/22/1999	

FE Sent For: *N/A*

<END>

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*Corrected
to /r unsw
ch
10-21*

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				_____	lrb-docadmin 10/07/1999		
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kjf
 10/20
 kjf/hmh
 10/20
 <END>

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I?	kunkemd	1 10/6 jg	Kjf 10/6	Kjf/km 10/6			

FE Sent For:

<END>



STEVE WIECKERT

STATE REPRESENTATIVE

CHAIRMAN
ASSEMBLY COMMITTEE
ON GOVERNMENT OPERATIONS

TO: MARK KUNKEZ

FROM: SCOTT BECHER

RE: TELEPHONE CALL ABOUT
DRAFTING REALTOR REGULATION
LEGISLATION.

IDEALS, PRINCIPLES, PATRIOTISM

STATE CAPITOL OFFICE: ROOM 9 NORTH • P.O. BOX 8953 • MADISON, WI 53708-8953 • (608) 266-3070 • (608) 2614360 FAX • Rep.Wieckert@legis.state.wi.us
DISTRICT 57 OFFICE: 3033 W. SPENCER STREET • APPLETON, WI 54914 • (920) 731-3000 • FAX: (920) 731-2999

COMMITTEES: EDUCATION • GOVERNMENT OPERATIONS • HEALTH • HOUSING • INSURANCE

Budget Amendments 1999-2000

Statement of Intent

Department of Regulation and Licensing. Revise Wis. State Chapter 452.3 2 to allow the Department of Regulation and Licensing to promulgate rules ensuring that real estate brokers have clear **and** comprehensive supervision duties and that brokers **would** be able to use the most appropriate means to fulfill these supervision **duties**.

Legislator

Wieckert

Amendment

Staff Contact

Scott

Status

Agency

Reg&Lic

Fax Cut

Summary

The Real Estate Board and the Department of Regulation and Licensing (DRL) are in the process of developing proposed revisions to the administrative rules which define the level of supervision that a broker is required to provide to his or her sales agents. Current rules do not adequately describe how a broker must provide a resource for sales agents with practice questions, how a broker supervises contract drafting, advertising practices or trust accounts practices.

This amendment would revise Wis. State Chapter 452.12 to allow the Department of Regulation and Licensing to promulgate rules ensuring that real estate brokers have clear and comprehensive supervision duties and that brokers would be able to use the most appropriate means to fulfill these supervision duties.

Fiscal Impact

According to Legislative Fiscal Bureau, this amendment should NOT carry any **fiscal** impact.

APCAL

Miller



Effective date. Provide that the new licensure provisions would take effect on the first day of the 13th month after the date of publication of the budget bill.

Fiscal effect. Estimate in 200041 increased PR revenues of \$18,400 and increased GPR-Earned of \$2,100.

Senate: No change to Joint Finance.

2. REQUIREMENTS FOR SALE OF FUNERAL GOODS AND SERVICES

Assembly/Senate/Conference Committee- Require that anyone who sells, or offers for sale, caskets, *outer* burial containers, or cemetery merchandise (defined as goods associated with the burial of human remains including monuments, markers, nameplates, vases and urns and any services associated with supplying those goods *or with the* burial of human remains) must do all of the following: (a) provide a price list and description for each type of casket, outer burial container or cemetery merchandise item that the person normally offers for sale without special ordering, along with the name, address and telephone number for the person's place of business and the effective date of the price list; (b) provide a price and description of (1) *any direct cremation* or burial service offered by the person; (2) any service offered by the person for the use of any facilities, equipment or staff related to a viewing funeral ceremony or memorial or graveside service; and (3) any basic service fee charged; (c) require the seller, upon completion of the sale, to provide the buyer with a receipt that includes the specific charges for merchandise and services provided; (d) prohibit the seller from providing misinformation regarding state, federal, local or individual cemetery burial requirements or from requiring an additional payment if a casket, outer burial container or cemetery merchandise is obtained from a third party; and (e) require the seller to retain copies of price information and sales receipts for one year and make these documents available to R&L upon request. Also, provide that any person who violates these provisions may be fined not more than \$1,000 or imprisoned for not more than six months *or both*. Provide that these requirements would first apply to sales or offers to sell that are made after the effective date of the budget bill.

3. REGULATION OF REAL ESTATE BROKERS

Assembly: Require the Department to promulgate rules that specify the responsibility and supervision requirements for brokers over the actions of their employees. Under current law, a broker is liable for the acts of his *or her* employees. This provision would require R&L to promulgate rules that define the level of supervision that a broker is required to provide to his or her sales agents and the most appropriate means for a broker to fulfill such requirements.

Senate/Conference Committee: No change to Joint Finance.

MEMORANDUM

TO: Representative Steve Wieckert

FROM: Rick Staff, General Counsel
Wisconsin REALTORS® Association, Inc.

DATE: June 14, 1999

RE: Supervision Rule Revision Talking Points

Rick Staff @ WRA.019

- The Real Estate Board and the Department of Regulation and Licensing are in the process of developing proposed revisions to the administrative rules which define the level of supervision that a broker is required to provide to his or her sales agents.
- Current rules do not adequately describe how a broker must provide a resource for sales agents with practice questions, how a broker supervises contract drafting, advertising practices or trust accounts practices. The Department is proposing to provide specific guidance to brokers in these areas.
- At the same time the Department intends to address how a broker might utilize third parties or technology resources to assist in performing the broker's duties. For example, many brokers use accountants to do their bookkeeping or personally review offers that an agent has faxed or e-mailed to the broker (located at the main office) while the agent remains in the field. A statutory impediment to developing some improved and realistic supervision standards is Wis. Stat. §452.12(3) which provides, without further explanation, only that employees at branch offices must be under the direct full-time supervision of a broker.
- In order that the Department might be able to promulgate rules which simultaneously insured that broker's have clear and comprehensive supervision duties and that brokers would be able to use the most appropriate means to fulfill these supervision duties, the Real Estate Board and Secretary Cummings have requested that Wis. Stat. Chapter 452.12 be revised. The Department would then promulgate rules which provide specific supervisory responsibilities regarding contracts, advertising, trust account and providing adequate resources to guide the salesperson and answer their questions.

452.12(3) BROKER'S SUPERVISION DUTIES AND LIABILITY FOR ACTS OF EMPLOYEES. (a) Each broker is responsible for the acts of any broker, salesperson or time-share salesperson employed by the broker.

(b) ~~If a broker maintains any branch offices in this state, each branch office must be under the direct full-time supervision of a broker. The broker maintaining the branch office shall be responsible for the acts and conduct of all.~~ A broker shall supervise all brokers, salespersons and time-share salespersons employed at the branch office by the broker in a manner which complies with the rules promulgated by the Department under this Chapter.

452.07 Rules; ^{review} of rules. (1) The department shall promulgate rules for the guidance of the real estate profession and define professional conduct, ~~and unethical practice and the supervisory duties of employing brokers.~~

1999

Date (time) needed

SOON

LRB - 3708, 1

BILL

MDH: jlg

PM NOT RUN

Use the appropriate components and routines developed for bill.

AN ACT ^{gen cat} . . . [generate catalog] **to repeal** . . . ; **to renumber** . . . ; **to consolidate and renumber** . . . ; **to renumber and amend** . . . ; **to consolidate, renumber and amend** . . . ; **to amend** . . . ; **to repeal and recreate** . . . ; and **to create** . . . of the statutes; relating to: INSERT A ✓

.....

.....

.....

.....

[NOTE: See section 4.02 (2) (br), Drafting Manual, for specific order of standard phrases.]

Analysis by the Legislative Reference Bureau

For the 3 titles used in an analysis, in the component bar:

For the main heading [old =M], execute: create → anal: → title: → head

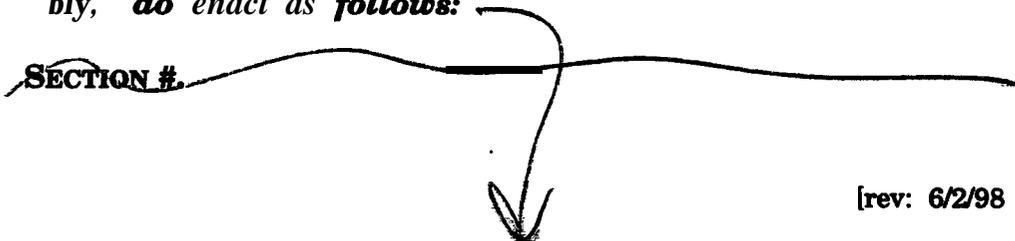
For the subheading [old =S], execute: create → anal: → title: → sub

For the sub-subheading [old =P], execute: create → anal: → title: → sub-sub

INSERT B ✓

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION #



ARC: Miller - Am. #34, DORL rule making regarding supervision of real estate brokers

**FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION
CAUCUS AMENDMENT
TO ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 1999 ASSEMBLY BILL 133**

At the locations indicated, amend the substitute amendment as follows:

~~1. Page 1375, line 20: after that line insert:~~

~~SECTION 29204~~ ⁴ 452.12 (3) (c) of the statutes is created to read:

452.12 (3) (c) The department shall promulgate rules that specify the responsibility and supervision requirements under this subsection and the most appropriate means for a broker to fulfill such requirements.

(END)

**1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3708/lins
MDK:.....

1
2
3
4

INSERT A:

~~the~~ responsibility of real estate brokers for employes and requiring the exercise of rule-making authority,



INSERT B:

Under current law, an individual may not act as a real estate broker unless he or she is licensed as a broker by the department of regulation and licensing (DORL). A licensed broker is responsible for the acts of any other broker or real estate or time-share salesperson employed by him or her. In addition, if a licensed broker maintains any branch office in this state, each such branch office must be under the direct, full-time supervision of a licensed broker.

This bill requires DORL to promulgate rules that specify the responsibility and supervision requirements described above.

Williams, Landon

To: Becher, Scott
cc: Kunkel, Mark
Subject: LRB 99-3708 per your request



99-3708/1

Landon T. Williams

Legislative Program Assistant
Legislative Reference Bureau
100 N. Hamilton
(608) 266-3561
landon.williams@legis.state.wi.us

Today
by 3:00pm
~~_____~~

D-NOTE

1999 BILL

INSERT A

1
2
3

AN ACT to create 452.12 (3) (c) of the statutes; relating to: ^{responsibility} real estate brokers for ~~employees~~ ^{regulator} and requiring the exercise of rule-making authority.

employee supervision by

Analysis by the Legislative Reference Bureau

Under current law, an individual may not act as a real estate broker unless he or she is licensed as a broker by the department of regulation and licensing (DORL). A licensed broker is responsible for the acts of any other broker or real estate or time-share salesperson employed by him or her. In addition, if a licensed broker maintains any branch office in this state, each such branch office must be under the direct, full-time supervision of a licensed broker.

This bill requires DORL to promulgate rules that specify the responsibility and supervision requirements described above.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

452.07 (1m)

4

SECTION 1. ~~452.07 (1m)~~ of the statutes is created to read:

BILL

452.07

(1m)

(B)

1
2
3
4

The department shall promulgate rules that specify the
~~responsibility and supervision requirements under this subsection and the most~~
~~appropriate means for a broker to fulfill such requirements.~~

(END)

INSEAT
2-4

INSEAT 2-3

1

INSERT A:

9

This bill eliminates the requirement regarding direct, full-time supervision of branch office employes and requires instead that a real estate broker must supervise any broker or real estate or real estate time-share salesperson employed by the broker. In addition, the bill requires DORL to promulgate rules that specify the supervisory duties of brokers regarding such employes.

2

INSERT 2-3:

no 9

supervisory duties of brokers under ~~452.12~~ (3).

800

stat. / no change

4

INSERT 2-4:

5

452.12 (3) BROKER'S LIABILITY FOR ACTS OF EMPLOYES. Each broker shall supervise, and is responsible for the acts of, any broker, salesperson or time-share salesperson employed by the broker.

6

7

History: 1981 c. 94; 1983 a. 27; 1985 a. 305; 1987 a. 264,399; 1989 a. 307,341; 1991 a. 39; 1995 a. 27,400; 1997 a. 27, 191,237.

8

SECTION 1. 452.12 (3) ~~b~~ of the statutes is repealed.

9

SECTION 2. 452.139 (2) (c) of the statutes is amended to read:

10

452.139 (2) (c) Nothing in this subsection limits the liability of a broker under s. 452.12 (3) (a) for misrepresentations made by an employe who is a broker. Nothing in this subsection limits the liability of a client for a misrepresentation that the client makes in connection with brokerage services.

11

12

13

History: 1993 a. 127.

(END OF INSERT)

Section #. 452.12 (3) (a) of the statutes is renumbered 452.12 (3) and amended to read:

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3708/1dn
MDK:.....

cm lt

DATE

✓
Representative Wieckert:

This version makes changes that I discussed with Rick Staff. If you have any questions, please contact me.

Mark D. Kunkel
Legislative Attorney
Phone: (608) 266-0131
E-mail: Mark.Kunkel@legis.state.wi.us

Smith, Irma

From: Smith, Irma

Sent: Wednesday, October 20, 1999 2:24 PM

To: Becher, Scott

Subject: Here is the draft you requested. Thanks, Irma



99-3708/1



99-3708/1dn

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 10/06/1999

To: Representative Wieckert

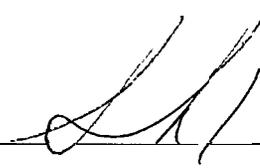
Relating to LRB drafting number: LRB-3708

Topic

DORL rule making regarding supervision of real estate brokers

Subject(s)

Occupational Reg. - misc

1. JACKET the draft for introduction _____   (9 w)
in the **Senate or the Assembly** (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

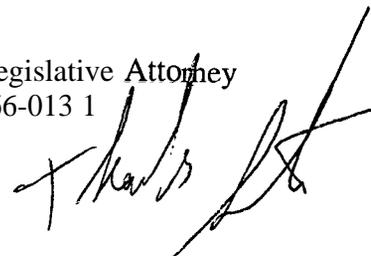
2. REDRAFT. See the changes indicated or attached _____
A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, ^{too} ~~prior to introduction~~ _____

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-356 1. If you have any questions relating to the attached draft, please feel free to call me.

Mark D. Kunkel, Legislative Attorney
Telephone: (608) 266-013 1



**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3708/1dn
MDK:cmh:kjf

October 20, 1999

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Mark D. Kunkel
Legislative Attorney
Phone: (608) 266-0131
E-mail: Mark.Kunkel@legis.state.wi.us

DRAFTER'S NOTE
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LRB-3708/2dn
MDK:cmh:kjf

October 20, 1999

Representative Wieckert:

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E-mail: Mark.Kunkel@legis.state.wi.us